

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5224 of 1997

with

SPECIAL CIVIL APPLICATION No 2068 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?  
No.

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GANGAGAR SEJGAR GOSWAMI

Versus

DIVISIONAL CONTROLLER

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Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 29/07/98

ORAL JUDGEMENT

These two petitions are filed by the workman and employer to challenge the award passed by the Labour Court, Bhavnagar in Reference No.657/93 on 2.1.1997.

Rule. Mr. Devnani, learned advocate waives service of rule in Special Civil Appln No.2068 of 1998 and Mr. H.K. Rathod, learned advocate waives service of rule in Special Civil Appln No.5224 of 1997.

2. These two petitions are pertaining to one and same award, they are heard together and they are disposed of by this common judgment.

3. The petitioner Gangagar Sejgar Goswami was working as a conductor in Rajula Depot of Amreli Division. When he was on duty as a conductor at Dhari Depot on 10.10.90, his bus was checked while on route from Amreli to Dhari, at Nava Khijadiya road by Checking Staff, and on checking it was found that though he had received the fares from 8 passengers, he had not issued tickets to them. On account of the said checking report, the department proceedings was initiated against him and on finding he had committed misconduct alleged against him, he was dismissed from service on 18.12.1991. He, therefore, raised an industrial dispute which resulted into Reference No.657/93.

4. It was contention of the petitioner that he was in process of issuing tickets when his bus was checked and there was no attempt on his part to misappropriate the amount. It was heavily loaded bus. There were about 70 passengers in the bus. He had issued 62 tickets and he had also not made entry in the Way Bill. Therefore, in the circumstances, there was only a misconduct on his part of not following the rules of the Corporation and there was no intention to misappropriate any amount.

5. The Learned Labour Judge has considered the material on record. He found that there was no dispute of the fact that there were 70 passengers in the bus when it was checked and out of those 70 passengers, tickets were issued to 62 passengers. It was also found by the Labour Judge that no entries were made by the conductor in the Way Bill. Therefore, in the circumstances, the Labour Court has observed that it could not be said that there was any misappropriation by the workman of the amount in question. The Labour Court has also observed that the amount in question was also a petty amount of 7 rupees and that circumstance was also taken into consideration. Now, in view of the findings of facts recorded by the Labour Court, it will be quite clear that from those facts as well as as per the claim of the department, the misconduct committed by the conductor was that he had allowed the bus to ply without fully booking the tickets. When the department had put reliance on the non-compliance of the said rule, it also indicates that the department has also not treated that the conductor had committed any misappropriation. Even accepting all the facts proved by the department, at the most what

could be said is that there was only a preparation for committing misappropriation. It could not be said that there was any attempt of misappropriating amount. Therefore, at the maxim which could be said is that there was only a preparation for misappropriation. It must be also stated that the version put by the conductor could not be said to be a false version. Therefore the punishment of dismissal was not justified. The discretion used by the Labour Court in interfering with the findings of the punishment could not be said either perverse or gross erroneous.

6. No doubt the service record of the petitioner-conductor shows that the petitioner had also previously committed misconduct, but, merely because of the same, I am unable to accept that there is a justification for dismissing him from the service. The Labour Court has also taken that circumstance in consideration and has denied all the backwages. There is a denial of backwages for six years and that is the sufficient punishment to the workman. Therefore, I am unable to accept the contention of the learned advocate for the Corporation that I should interfere with the discretionary order passed by the Labour Court and setting aside the order of punishment and restore the punishment awarded by the department. Similarly, the writ petition filed by the workman seeking the payment of backwages could not be allowed. The record shows that the petitioner-conductor had committed similar misconducts earlier and he has not shown any improvement. Therefore, it is necessary to punish him so as not to repeat the said misconduct and the punishment of denial of back wages for six years is quite justified.

7. In the facts and circumstances of the case, I hold that both these petitions deserves to be rejected. I accordingly reject both the petitions. Rule is discharged in both the petitions with no order as to costs.

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